Full Digest Administration's New Passport Bill, P. 3; Humphrey's Liberal Substitute, P. 4

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Gun-Boat Diplomacy in the H-Bomb Age

Those who believed that no major power would risk a world war in the H-bomb age now have their answer. It is also the answer to those who thought that the only possible danger might be from a half-mad dictator ruling a terrorized society. Eisenhower, Nixon and Dulles ordered the Marines into action in Lebanon without consulting Congress, our allies in NATO or the UN. All three were confronted with a fait accompli, as if this were the world of 1900, the Lebanon a banana republic on our doorstep, and the most lethal weapon still the machine gun. This could conceivably be the start of the final planetary struggle. How casually it may have been set in motion.

A free society is supposed to have some control over its destiny, but even those in Congress and the press who feel uneasy are impelled to take the attitude that, since the die has been cast, they have no recourse but to support the President. As before every war, it is considered patriotic to let one's country slide into catastrophe; the air is full of the old familiar —and fatal—cliches: we mustn't appease, we must call their bluff, our prestige is at stake. . . .

Rayburn Cuts Off Discussion

Only 18 months ago when President Eisenhower asked Congress to approve the so-called Eisenhower Doctrine, he promised that if armed intervention became necessary he would first consult Congress. But only one member, Representative Reuss, a maverick Democrat from Wisconsin, had the nerve to stand up (see box in next column) and recall that promise. His criticism was cut short by Speaker Rayburn with a rebuke, "In times like these we had better allow matters to develop rather than make remarks about them."* These "matters" may be thermonuclear.

Let us assume that the Russians will not intervene, either directly or by volunteers, though this is not at all certain, considering the unsteadiness recently apparent in Kremlin policy. Stalin could back down over Iran in 1946 without risk of losing his own job, but can Krushchev take a comparable defeat without fear of being overwhelmed by rivals? Russia aside for the moment, what if we persist in our intervention? Where can it lead us but into a military morass, an Algeria of our own many times magnified in which oil wells and pipelines will be at the mercy of guerrillas? The fact that we were taken by surprise in Iraq is not to be read merely as the failure of CIA spies to learn about a conspiracy. It is to be read as reflecting our political failure correctly to assess the realities of an allied Arab country in which we had a large military mission. The Iraqi Army we had given $45,000,000 in military supplies turned against us. Obviously it had been solidly and secretly against us for some time, since this uprising of which we had no inkling was not an overnight improvisation. If we did so badly in Iraq, what makes us think we can police the whole Arab world?

In the atmosphere of demonology created by the State Department, it has become dangerous to suggest that maybe there may be social revolutions in the Middle East, as in Iraq (all parties had been outlawed and a free press long banned in that oil company utopia), or a great big Saturday night family brawl as in the Lebanon, without its necessarily being the handiwork of Big Devil in Moscow or Little Devil in Cairo. We are being blinded by our own propaganda. The right of the Arabs to a place of respect in the world is something we must recognize, and the sooner we recognize it, incidentally, the better for Israel. The landing of the Marines in Beirut is calculated to unite the whole Arab world against us. The clumsy baldness with which we did it have cost us much among smaller friendly powers in the UN. Even if it doesn't lead to World War III, this will prove one of the worst mistakes ever made in American military and diplomatic history. It is the duty of all to speak up now when there is still time.

Eisenhower's Promise 18 Months Ago

"Because of the great issues at stake, the administration should not have intervened in the Middle East without consulting Congress and allowing debate. . . . President Eisenhower in 1957 [Middle East Message, Jan. 5] told Congress, 'If . . . a situation arose which called for military application of the policy [the Eisenhower Doctrine] which I ask the Congress to join me in proclaiming, I would of course maintain hour-by-hour contact with the Congress. And if the Congress were not in session . . . I would, of course, at once call the Congress into special session.' If the President is obliged to consult Congress in the event of a violation of the Eisenhower Doctrine, how much more is he required to consult Congress in the event of an intervention not required by the Eisenhower Doctrine."

—Reuss (D. Wis.) House of Representatives, July 15.

* The Speaker edited his rebuke out of the Congressional Record but it was reported by the Associated Press and the New York Times. His interjection, according to the latter (July 16), "effectively cut off any further House discussion." Next day, when Celler of New York rose to ask unanimous consent for a one-minute speech, Rayburn wanted first to know if it were on foreign policy and refused consent when told that it was—until Celler explained that he wanted to support the sending of troops to Lebanon, when he was allowed to proceed. The Speaker made it clear that no further discussion of foreign policy would be allowed. This, in a representative assembly!

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Summary Dismissal on Vague Security Charges and Illegal Detention for Crime

The House of Representatives Shows How Little It Cares for Basic Rights

Twice within recent weeks the House of Representatives has demonstrated a mob-like readiness to override the most fundamental rights. One was the passage by voice vote on June 30 of the so-called Mallory bill. The other on July 10 was the approval, 295 to 46, of a bill to declare all Federal government jobs "sensitive" and subject as such to summary removal proceedings on grounds of "disloyalty" or "subversion."

Both bills are intended to reverse Supreme Court decisions, and both reflect hatred for its recent liberal trend especially where this has protected the rights of Negroes. HR 11477, which now goes to the Senate, is the result of the Supreme Court's unanimous decision in the Mallory case, reversing the conviction of a feeble-minded Negro youth for rape. S 1411, which goes to conference committee, is meant to override the Court's 6-3 decision in the *Cole* case, which held that only Federal employes in sensitive positions could be dismissed without some form of hearing.

Amply Girdled Already

No free government in the world is protected by so many political chastity belts as those which surround the government of the United States. The Hatch Act of 1939 bars the employment in the government of Communists or other revolutionaries. The Internal Security Act of 1950 forbids the employment of persons belonging to organizations adjudged to be Communist action groups, "fronts" or even "infiltrated" by Communists. The Civil Service Law permits discharge of Federal employes where there is "reasonable doubt as to the loyalty of the person involved." These laws have only one drawback in the eyes of our professional hunters of un-Americanism—they require some form of trial and proof.

In addition there is Public Law 733, passed shortly after the Korean War began. This was the law involved in the Cole case. Under it, despite that decision, the government can still discharge without trial or stated reason any person suspected of being a security risk or disloyal in 11 major departments of government, including State, Defense and Justice. S 1411, as passed by the House, would extend this to all Federal jobs.

Nature "Friendship" Subversive

The facts in the Cole case illustrate how loosely this could be applied. Cole was employed by Health, Education and Welfare, which is not one of the 11 departments named in Public Law 733 as sensitive but which was later blanketed in by Presidential decree. Cole was a food and drug inspector, hardly a position which gave him access to military or diplomatic secrets. He was not charged with being a Communist but with "close association with individuals reliably reported to be Communists" and with "a continued and sympathetic association with the Nature Friends of America", the latter an organization placed (of course without specific charges or hearing) on the Attorney General's list. The Supreme Court held that Cole's employment was not "sensitive" enough to justify summary discharge, but still left open the possibility of firing him as disloyal under Civil Service "suitability" regulations.

Though a letter from an Acting Assistant Attorney General asked that legislation be withheld until the Department of Justice could complete its own study of the Cole decision and the Wright Commission Security Report, the Democratic party leadership in the House with full Republican support rammed the bill through. Congressmen Holifield (D. Cal.), Porter (D. Ore.), Yates (D. Ill.), Holtzman (D. N.Y.), Dollinger (D. N.Y.), Wier (D. Minn.), Mrs. Church D. Ill.) and Multer (D. N.Y.) deserve applause for trying their best to block the bill from the floor.

Fortunately the House version of S 1411 is so different from the original Senate bill that chances are good it will be blocked in the upper Chamber. The Mallory bill, too, is likely to die in the Senate, though swift submission from Eastland's Judiciary Committee and passage in the hectic closing days of the session is not impossible.

The Very Heart of the Police State

The Mallory bill is of dubious constitutionality. It strikes at one of the most fundamental bulwarks against a police state, that provision of the Constitution which forbids the police to pick up and arrest anyone they please and hold him until they have extracted a confession. The Fourth amendment provides that no one may be arrested except "upon probable cause."

In 1943, in the McNabb case, the Supreme Court held that a confession obtained by the police from a person unlawfully held could not be used against him at his trial. The Federal Rules of Criminal Procedure, as subsequently adopted, provided that an arrested person shall be arraigned "without unnecessary delay" so that he may be apprised of the charges against him and of his rights. Mallory was held and questioned for eight hours and not arraigned until after a confession had been obtained. The Court, speaking through Mr. Justice Frankfurter, outlawed the confession and remanded for a new trial. The prosecutor, perhaps in pique, then dismissed the case instead of retrying it.

The Mallory decision touched a sensitive spot with the Southerners and the police; neither are accustomed to regarding Negro suspects as covered by the Constitution. Keating of New York and Walter of Pennsylvania joined in putting through the Mallory bill. It says no confession shall be held inadmissible "solely because of delay" in arraignment. The American Bar Association's Special Committee on the Bill of Rights opposed the bill on the ground that it would "take away the only existing strong incentive" for the police to obey the Constitutional safeguards against illegal detention. We hope it dies in the Senate.

The Constitution Was Not Written for the Convenience of the Police

"The proponents of this legislation state that the Mallory rule hampers effective law enforcement. They urge that it is often difficult to show 'probable cause' unless and until they have secured a confesion. The difficulty with this argument is that the Fourth amendment to the Constitution prohibits any arrest except upon probable cause. If there is no probable cause at the time of the arrest, the accused should not be arrested to begin with. If, on the other hand, the arrest is lawful under the Fourth amendment, there is already probable cause and no confession therefore is necessary in order to hold an accused. . . .

"Rule 5 (a), requiring arraignment without unnecessary delay, is a good rule. Nearly all of the States have similar enactments. It is aimed at preserving constitutional rights and, in particular, procedural due process of law. It provides for the treatment of accused people on an equal basis. It offers protection to the impoverished, uneducated, or youthful suspect. The hardened or 'well heeled' criminal does not need a committing magistrate to advise him."

—House Judiciary Com., Minority Report Against the Mallory Bill by Celler, Rodino, Holtzman and Libonati.

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New Eisenhower-Dulles Passport Measure Worse Than Present Regulations

Complete Digest of Administration's "Faceless Informer" Travel Control Bill

S. 4110 (identical with HR 13318 in the House), the Administration's passport bill, forbids the issuance of passports (except abroad for immediate return to the U.S.) to persons under indictment for felony or passport infractions; to persons convicted within five years of passport violations; to persons "as to whom it is determined upon substantial grounds" that they intend to travel into a country or area into which the Secretary of State has forbidden travel; or to [Sec. 103 (6)]—

"Persons as to whom it is determined upon substantial grounds that their activities or presence abroad or their possession of a passport would (i) be in violation of any law of the United States or any State or Territory, or any order issued by any court in the United States; (ii) seriously impair the conduct of the foreign relations of the United States; or (iii) be inimical to the security of the United States."

Who Is "Communistic"?

In determining whether a person comes within the categories described in (ii) and (iii) above, the Secretary of State "shall consider as material, among other matters, whether the applicant is a person who, whether or not a member or former member of, or affiliated with, the Communist Party, knowingly engages or has engaged, within ten years prior to filing the passport application, in activities in furtherance of the international Communist movement."

Burden of Proof

"If the evidence . . . is such as to warrant the conclusion" that the passport applicant is such a person, he "shall have the burden of proving that he is not within one of the categories described" above.

Oath Requirement

". . . Each applicant for a passport shall be required to state in the passport application whether he is, or has been within ten years prior to verifying the application, a member of the Communist Party or a supporter of the international Communist movement, and to state the circumstances of any such membership or to state his activities in support of the international Communist movement."

Denial or Revocation of Passports

The applicant must be informed of his denial within 90 days. "A denial shall set forth the reasons therefor, *as specifically as is consistent with considerations of national security and foreign relations.* A passport may be revoked whenever the holder thereof is not entitled to a passport under the terms of this Act. Upon the revocation of a passport, the holder therefor shall be informed in writing of the reasons therefor, *as specifically as is consistent with considerations of national security and foreign relations.*" (Italics added.)

Passports No Longer Private Property

"A passport issued under this Act shall at all times remain the property of the United States. It shall be unlawful for any holder of a passport to refuse to surrender it. . . ."

Passport Appeals Procedure

A Passport Hearing Board would be set up consisting of three members designated by the Secretary of State. When a passport has been denied, revoked or restricted (except for travel to areas barred by the Secretary of State), an appeal may be made to the Board within 30 days. The Secretary of State would have authority to make such rules as would accord the individual appealing "the following rights:

"(1) To appear in person and to be represented by counsel.

"(2) To testify in his own behalf, present witnesses and offer other evidence.

"(3) To cross-examine witnesses appearing against him *at any hearing at which he or his counsel is present* and to examine all other evidence *which is made a part of the open record.*

"(4) To examine a copy of the transcript of the proceedings or to be furnished a copy upon request.

Secret Evidence Allowed

"(b) In order to protect information, sources of information and investigative methods, disclosure of which would have a substantially adverse effect upon the national security or the conduct of foreign relations, the Board may at any time consider oral or documentary evidence *without making such evidence part of the open record.* The Board shall furnish a resumé of any such evidence, and shall certify that it is a fair resumé. The Board shall take into consideration the individual's inability to challenge information of which he has not been advised in full or in detail or to attack the credibility of information which has not been disclosed to him."

(Notice that there is no provision here for telling the passport applicant just what he is charged with having done. Not only is the burden of proof on the applicant, but he would not need to be told just what he had to disprove. The bill provides for some statement of charges only in those cases where a passport has been revoked.)

Secretary May Make Own Findings

The Board shall make written findings to the Secretary of State, but the applicant will be given a copy only of such recommendations "as are based upon the open record." Within 20 days he may file objections to these with the Secretary. The Secretary in making the final decision "may also consider additional information, available to him as Secretary of State, *which cannot be made known to the individual, either by resumé or otherwise.*"

Courts Bound By His Findings

The U.S. District Court for the District of Columbia may entertain appeals from the Secretary's action "to determine whether there has been compliance with the provisions of this Act and of any regulations issued thereunder. In any such proceedings the court shall have power to determine whether any findings which are stated to be based upon the open record are supported by substantial evidence contained in that record, *but as to the findings stated to be based on the closed record the court shall accept the resumé of certification by the Secretary or the Board as supporting such findings.*"

Area and Country Control

Passport holders would be forbidden to travel in any country or area the Secretary had publicly determined to be a place where "the United States Government is unable to provide [them] adequate protection . . . due to the lack of diplomatic relations or due to disturbances within such countries or areas, *or that travel of United States nationals to or in such countries or areas would seriously impair the foreign relations of the United States.*"

Penalties

Any person who travelled in a forbidden area or refused to surrender his passport would be guilty of a misdemeanor punishable by not more than one year in jail or by a fine not exceeding $1,000 or both.

(No mention is made in the bill of punishment for misstatements in passport applications. These would be subject to punishment under the perjury or false claims statutes, which provide penalties of five years in jail and $5,000 fine.)

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Philosophically the Eisenhower-Dulles Passport Bill Is Pure "Kremlinism"

Seven Liberal Democratic Senators Introduce A Travel Magna Charta

On the eve of the passport bill hearings before the Senate Foreign Relations Committee, seven liberal Democratic Senators led by Humphrey finally raised a banner to which believers in fundamental liberties can rally. Instead merely of fighting a weak defensive action against 57 varieties of travel restriction, all pickled in authoritarian brine, they took the offensive by introducing a bill to guarantee the right to travel.

There could be no sharper contrast than that between the Eisenhower-Dulles "faceless informer" travel control bill (the reader will find a complete digest of its provisions on page three) and the Humphrey measure. First of all Humphrey and his colleagues (Anderson, Chavez, Hennings, Morse, Neuberger and Symington) would repeal that provision of the Walter-McCarran Immigration and Naturalization Act of 1952 which for the first time in American history made it a crime for an American citizen to leave or enter his country in peace-time without a passport.

Passports Denied Only For Crime

Secondly the bill would put Congress on record as declaring that "freedom of movement" is a basic American liberty and "that no tests of beliefs or associations shall be applied to issuance of passports." Except in time of war (but not in time of "emergency") the Secretary of State may refuse a passport only to persons "under indictment, information or sentence for the commission of a felony."

Thirdly the bill would limit special treatment of certain areas to (1) places in which U.S. forces are involved in hostilities and to which travel may temporarily be barred and (2) areas where the President determines that because of lack of diplomatic relations or "threatened or existing hostilities or disturbances" the U.S. cannot give its citizens protection. Travel to such areas will not be forbidden but will be at the traveller's risk.

Secret Informers Barred

Finally the bill provides that all actions taken by the State Department on passports, whether in handling individual cases, or in establishing rules, shall be subject to the Administrative Procedures Act with its guarantees of due process.

What Danger?

"In President Eisenhower's message to Congress on passport legislation on July 7, 1958, he emphasized the 'urgency' of the situation and said that each day that passes 'exposes us to great danger,' but nowhere did he say what this danger was. In Secretary Dulles' letter to Congress transmitting the Administration's proposed legislation on July 8, 1958, he talked about the 'bitter struggle against the International Communist Movement,' but nowhere did he show the denial of passports has aided or would aid our country in that bitter struggle. Loose phrases that the granting of passports may be 'inimical to the security of the United States' or 'impair the conduct of our foreign relations' are no substitute for proof. The Administration is asking Congress to assume that there is a security aspect to passports without a single fact or a single word of proof."

—Joseph L. Rauh, Jr., testifying for the ADA July 16 against the Administration passport bill.

"This means," among other things, as Senator Humphrey told the Senate on July 15, "that unidentified informants or secret dossiers cannot be used."

The eyes of informed persons abroad are on Washington in this travel control fight. So conservative a newspaper as the London *Observer* (July 13) found its credulity stretched by the near-hysterical tone of the President's message to Congress for passport legislation. It thought that if the Administration bill passed "the West will be on weak ground in criticizing the Soviet government for refusing to allow Russian citizens to travel freely outside the Soviet Union." Philosophically the assumptions of the Eisenhower-Dulles bill are identical with the Kremlin's in the belief that the right to travel is something the State may manipulate as an instrument of policy, that oppositionists should not be allowed to travel, that secret informers are a necessary arm of government and that the burden of proof is on the suspected citizen. We hope every reader will make his voice heard for Humphrey's bill and against the Eisenhower-Dulles measure.

Watch Next Week's Issue for Full Coverage on the Passport Hearings

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